**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO.1471 OF 2007**
**IN**
**SUIT NO.960 OF 2006**

Dr.Shailaja A. Dabholkar & Anr. ...Plaintiffs
V/s.
Bhagirathibai Chandrashekhar Kale & Ors. ...Defendants

Mr.M.P. Vashi, Advocate, for the Plaintiffs.

Mr.O.P. Pandey, Advocate, for Defendant Nos.1 and 2.

**CORAM : S.J. VAZIFDAR, J.**

**DATE : 4TH SEPTEMBER, 2007.**

**P.C. :**

1. This Notice of Motion has been taken out by the Plaintiffs alleging contempt against Defendant Nos.1 and 2 for having violated an order of this Court dated 20-04-2006.

2. By the order dated 20-04-2006, ad-interim reliefs in terms of prayer clause (b) except the bracketed portion was granted in the Plaintiffs Notice of Motion No.1216 of 2006. Prayer (b) reads as under:-

> "(b). That pending the hearing and final disposal of the suit, the 2nd defendant, his servants, agents and employees be prevented by an order and injunction of this Hon'ble Court from dealing with, disposing of or encumbering the said building or any part thereof, (including the flat on the 2nd floor, now lying vacant.)" (emphasis supplied).

3. Defendant No.1 is the mother of the Plaintiffs and Defendant Nos.2 & 3.

4. A tenancy agreement dated 05-12-2002 has admittedly been executed by Defendant No.1 in favour of the wife of Defendant No.2 in respect of a garage on the ground floor.

5. It is important to note that the order dated 20-04-2006 was only against Defendant No.2 and not against Defendant No.1. Indeed in prayer (c) of the said Notice of Motion the Plaintiff sought an injunction only against Defendant No.2 and not against Defendant No.1. Thus no case for contempt of Court has been made out against Defendant No.1.

6. Mr.Vashi then submitted that Defendant No.2 is guilty of contempt of Court as he had signed the tenancy agreement.

7. It is important to note that the tenancy agreement has been signed by Defendant No.2 not in his personal capacity but as the constituted attorney of Defendant No.1. On behalf of Defendant No.1 it is stated that he did not confirm the agreement in his personal capacity and does not confirm or adopt the same in any manner whatsoever.

8. It is true that Defendant No.2 is the husband of Smt.Sujata R. Kale in whose favour the tenancy has been created. However for reasons best known to the Plaintiff, reliefs were not sought against Defendant No.1. If the Plaintiffs wanted to restrain Defendant No.1 in a similar manner, it was for them to have sought reliefs in Notice of Motion No.1216 of 2006 against her.

9. Considering the fact that this Court is exercising contempt jurisdiction, it is not open to take action for contempt unless there is a clear breach of the order.

10. It is clarified that this order does not in any manner prevent the Plaintiff from adopting proceedings including in respect of the said tenancy agreement.

11. In the circumstances, the Notice of Motion is dismissed.